

**BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Petition for Reinstatement of
Respiratory Care Practitioner License No. 22201
by:

CARRIE J. SMEDLEY
12476 Via Diego
Lakeside, CA 92040

Petitioner.

**DECISION ON PETITION FOR
REINSTATEMENT OF RESPIRATORY CARE
PRACTITIONER LICENSE**

On December 22, 2010, Carrie J. Smedley, hereinafter Petitioner, filed a Petition for Reinstatement, hereinafter Petition, of her surrendered respiratory care practitioner license number 22201. Petitioner signed under penalty of perjury that the information contained in the Petition and copies of all documents submitted within the Petition were true and correct. Petitioner chose not to be represented by counsel.

The following is the Decision of the Respiratory Care Board of California, hereinafter Board, on the Petition for the Reinstatement of Respiratory Care Practitioner License No. 22201.

FACTUAL FINDINGS

On December 31, 2001, Petitioner was issued Respiratory Care Practitioner License No. 22201.

1. On March 2, 2007, the Board filed an Accusation against Petitioner alleging a violation of Business and Professions Code section 3750(d), conviction of a crime, and 3750(j), commission of a fraudulent, dishonest, or corrupt act. The circumstances are as follows:
 - On November 13, 2006, Petitioner was convicted of felony grand theft. The facts surrounding the incident are that in or about February 2005, while acting as Treasurer for the Alpine Girl's Softball Association, Petitioner fraudulently wrote to herself, and cashed, checks totaling over \$10,000.
2. On July 19, 2007, the Board adopted a Stipulated Settlement and Disciplinary Order placing the Petition on probation with terms and conditions for a period of three (3) years, effective July 29, 2007. Shortly after being placed on probation, Petitioner contacted the Board indicating she no longer desired to practice as a respiratory care practitioner, and wished to surrender her license.
3. On November 2, 2007, the Board adopted a Stipulated Surrender of License and Order in which Petitioner agreed to the surrendering of her respiratory care practitioner license effective November 12, 2007.
4. On December 22, 2010, the Board received Petitioner's Petition for Reinstatement of her surrendered license and received updates through August 25, 2011.
5. Petitioner provided a copy of her respiratory education program certificate of completion from Grossmont College on December 20, 1991, and an Associate in Science Degree in Respiratory Therapy on December 17, 2001.

6. Petitioner provided proof of completion of 6 continuing education units from December 10, 2010 through January 19, 2011. Petitioner also provided certification from the American Heart Association for successfully completing the Basic Life Support for Health Care Providers (CPR and AED) program in February, 2011.
7. Petitioner admits she had an alcohol problem which contributed to her criminal behavior. Petitioner sought help with this problem and has been clean and sober since January 19, 2009.
8. Petitioner continues to attend Alcohol Anonymous (AA) meetings three to four times per week. Petitioner's AA sponsor indicates she has worked with Petitioner on many steps, has attended meetings with Petitioner, and has witnessed the Petitioner work very hard for her sobriety. In a separate recommendation letter, Petitioner is described as participating in meetings, fellowship, volunteering, and education to promote the personal strength and self esteem required to maintain her sobriety and relapse prevention.
9. Petitioner was evaluated by Roberto J. Velasquez, Ph.D. of the La Maestra Community Health Center on June 15, 2011. In a letter dated the same day, Dr. Velasquez states he has begun to treat Petitioner and finds her competent and capable to resume her work as a respiratory therapist.
10. Petitioner has not been employed in the medical field since the surrendering of her license. She is currently unemployed.
11. Petitioner has had no further re-offenses or contact with law enforcement since the criminal events that led to the disciplining of her license in 2007.

DETERMINATION OF ISSUES

12. Pursuant to Business and Professions Code Section 3751, a person whose license has been revoked can petition for reinstatement of the license after three years from the date of revocation. Since Petitioner's license was surrendered effective November 12, 2007, sufficient time has elapsed for her petition to be considered by the Board.
13. Respiratory Care Board regulation, Title 16, California Code of Regulations, Section 1399.372 provides in relevant part:

When considering the . . . petition for reinstatement, . . . the board will consider the following criteria in evaluating the rehabilitation of such person and his or her eligibility for a license:

- (a) The nature and severity of the act(s) or offense(s).
- (b) The total criminal record.
- (c) The time that has elapsed since the commission of the act(s) or offense(s).
- (d) Compliance with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against such person.
- (e) Evidence of any subsequent act(s) or crime(s) committed.
- (f) Any other evidence of rehabilitation submitted that is acceptable to the board including:
 - (1) Successful completion of respiratory care courses with a "C" or better, as determined by the institution'
 - (2) Active continued attendance or successful completion of rehabilitative programs such as 12-step recovery programs or psychotherapy counseling;
 - (3) Letters relating to the quality of practice signed under penalty of perjury from licensed health care providers responsible for the supervision of his/her work.
- (g) Statements, letters, attestations of good moral character, or references relating to character, reputation, personality, marital/family status, or habits shall not be considered rehabilitation unless they relate to quality of practice as listed in section (f).

14. In applying the Findings of Fact to the Criteria for Rehabilitation, the Respiratory Care Board finds that sufficient evidence of rehabilitation exists to warrant the reinstatement of Petitioner's respiratory care practitioner license with restrictions.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

The Petition for Reinstatement filed by Carrie J. Smedley is hereby GRANTED.

Petitioner shall pay the current licensing fee of \$200.00. Upon receipt of such payment, Petitioner's Respiratory Care Practitioner License No. 22201 shall be REINSTATED, however, the license shall be placed on probation for thirty (30) months subject to the following terms and conditions:

- 1. WORK SCHEDULES** Respondent shall be required to submit to the probation monitor work schedules on a weekly/monthly basis for the length of probation for each and every place of employment. Respondent shall ensure the Board has a copy of her/his current work schedule at all times for each place of employment.
- 2. BIOLOGICAL FLUID TESTING** Respondent, at his/her expense, shall participate in random testing, including but not limited to biological fluid testing (i.e. urine, blood, saliva), breathalyzer, hair follicle testing, and/or any drug screening program approved by the Board.

Respondent shall be required to make daily contact, to determine if he/she is required to submit a specimen for testing, each day, including weekends, holidays, and vacations in or outside of California, at a lab approved by the Board. Board representatives may also appear unannounced, at any time to collect a specimen. All collections will be observed.

At all times, Respondent shall fully cooperate with the Board or any of its representatives, and shall, when directed, appear for testing as requested and submit to such tests and samples for the detection of alcohol, narcotics, hypnotic, dangerous drugs or other controlled substances. All alternative testing sites, due to vacation or travel outside of California must be approved by the Board, 30 days prior to the vacation or travel.

If Respondent is unable to provide a specimen in a reasonable amount of time from the request, while at the work site, Respondent understands that any Board representative may request from the supervisor, manager or director on duty to observe Respondent in a manner that does not interrupt or jeopardize patient care in any manner until such time Respondent provides a specimen acceptable to the Board.

If Respondent tests positive for a banned substance (including testing positive for ETG), the Board will contact the Respondent and his/her employers, human resources personnel, directors, managers, supervisors, and/or contractors and notify them of the positive test, including the substance(s) and levels detected. Thereafter, the Board may contact the specimen collector, laboratory, Respondent, treating physician, treatment provider and/or support group facilitators to determine whether the positive test is evidence of prohibited use. If the Board determines the positive test is not evidence of prohibited use, the Board shall inform the Respondent and others previously contacted, that the positive test was not a violation of his/her probationary order.

- 3. ABSTENTION FROM USE OF MOOD ALTERING SUBSTANCES** For purposes of these terms and conditions, a banned substance includes alcohol, marijuana, controlled substances and any and all other mood altering drugs and substances. Respondent shall completely abstain from the possession or use of all banned substances and their associated paraphernalia. Respondent may take other medication when lawfully prescribed by a licensed practitioner as part of a documented medical

treatment. Respondent shall provide the Board a copy of a prescription within five days of the date the prescription was filled.

Respondent shall execute a release authorizing the release of pharmacy and prescribing records as well as physical and mental health medical records. Respondent shall also provide information of treating physicians, counselors or any other treating professional as requested by the Board.

Respondent shall ensure that he/she is not in the presence of or in the same physical location as individuals who are using illegal substances, even if Respondent is not personally ingesting the drug(s). Respondent shall also ensure he/she is not ingesting or using any product that contains trace amounts of alcohol or any other banned substances (including but not limited to: cold/flu medications, cough syrups, diet pills/products, mouth wash, skin care or hygiene products, perfumes, poppy seeds, dessert or any foods).

Any positive result that registers over the established laboratory cutoff level for a banned substance, shall be reported to each of Respondent's employers.

4. OBEY ALL LAWS Respondent shall obey all laws, whether federal, state, or local. The Respondent shall also obey all regulations governing the practice of respiratory care in California.

Respondent shall notify the Board in writing within three days of any incident resulting in his/her arrest, or charges filed against, or a citation issued against, Respondent.

5. QUARTERLY REPORTS Respondent shall file quarterly reports of compliance under penalty of perjury, on forms to be provided, to the probation monitor assigned by the Board. Omission or falsification in any manner of any information on these reports shall constitute a violation of probation and shall result in the filing of an accusation and/or a petition to revoke probation against Respondent's respiratory care practitioner license.

Quarterly report forms will be provided by the Board. Respondent is responsible for contacting the Board to obtain additional forms if needed. Quarterly reports are due for each year of probation and the entire length of probation as follows:

For the period covering January 1st through March 31st, reports are to be completed and submitted between April 1st and April 7th.

For the period covering April 1st through June 30th, reports are to be completed and submitted between July 1st and July 7th.

For the period covering July 1st through September 30th, reports are to be completed and submitted between October 1st and October 7th.

For the period covering October 1st through December 31st, reports are to be completed and submitted between January 1st and January 7th.

6. PROBATION MONITORING PROGRAM Respondent shall comply with requirements of the Board appointed probation monitoring program, and shall, upon reasonable request, report to or appear to a local venue as directed.

Respondent shall claim all certified mail issued by the Board, respond to all notices of reasonable requests timely, appear as requested by the Board, and submit Annual Reports, Identification Update reports or other reports similar in nature, as requested and directed by the Board or its representative.

Respondent shall provide to the Board the names, physical work addresses, work mailing addresses, telephone numbers, and e-mail addresses of all employers, human resources personnel, directors,

managers, supervisors, and contractors, and any person providing direct supervision, and shall give specific, written consent that the Respondent authorizes the Board and its representatives and the employers, human resources personnel, directors, managers, supervisors, and contractors, and any person providing direct supervision, to communicate regarding the Respondent's work status, performance, and monitoring. Monitoring includes, but is not limited to, any violation or potential violation of any probationary term and condition.

Respondent is encouraged to contact the Board's Probation Program at any time he/she has a question or concern regarding his/her terms and conditions of probation.

7. RESTRICTION OF PRACTICE Respondent may not be employed or function as a member of respiratory care management or supervisory staff during the entire length of probation. This includes lead functions. Respondent is prohibited from working as part of a transport team. Respondent is also prohibited from providing instruction or supervision to respiratory care students or applicants whether in a clinical or classroom setting.

8. PROBATION MONITORING COSTS All costs incurred for probation monitoring during the entire probation shall be paid by the Respondent. The monthly cost may be adjusted as expenses are reduced or increased. Respondent's failure to comply with all terms and conditions may also cause this amount to be increased. Probation monitoring costs will not be tolled.

All payments for costs are to be sent directly to the Respiratory Care Board and must be received by the date(s) specified. (Periods of tolling will not toll the probation monitoring costs incurred.)

If Respondent is unable to submit costs for any month, he/she shall be required, instead to submit an explanation of why he/she is unable to submit the costs, and the date(s) he/she will be able to submit the costs including payment amount(s). Supporting documentation and evidence of why the Respondent is unable to make such payment(s) must accompany this submission.

Respondent understands that failure to submit costs timely is a violation of probation and submission of evidence demonstrating financial hardship does not preclude the Board from pursuing further disciplinary action. However, Respondent understands that by providing evidence and supporting documentation of financial hardship it may delay further disciplinary action.

In addition to any other disciplinary action taken by the Board, an unrestricted license will not be issued at the end of the probationary period and the respiratory care practitioner license will not be renewed, until such time all probation monitoring costs have been paid.

The filing of bankruptcy by the Respondent shall not relieve the Respondent of his/her responsibility to reimburse the Board for costs incurred.

9. EMPLOYMENT REQUIREMENT Respondent shall be employed a minimum of 24 hours per week as a respiratory care practitioner for a minimum of 2/3 of his/her probation period.

Respondent may substitute successful completion of a minimum of thirty (30) additional continuing education hours, beyond that which is required for license renewal, for each 8 months of employment required. Respondent shall submit proof to the Board of successful completion of all continuing education requirements. Respondent is responsible for paying all costs associated with fulfilling this term and condition of probation.

10. NOTICE TO EMPLOYER Respondent shall be required to inform all current and subsequent employers, directors, managers, supervisors, and contractors during the probation period, of the discipline imposed by this decision by providing his/her current and subsequent human resources personnel, directors, managers, supervisors, and contractors with a complete copy of the decision and

order, and the Statement(s) of Issues or Accusation(s) in this matter prior to the beginning of or returning to employment or within 3 days from each change in a supervisor or director.

If Respondent is employed by or through a registry [and is not restricted from working for a registry], Respondent shall also make each hospital or establishment to which he/she is sent aware of the discipline imposed by this decision by providing his/her human resources personnel, manager, and supervisor for each shift, at each hospital or establishment with a copy of this decision, and the Statement(s) of Issues or Accusation(s) in this matter prior to the beginning of employment. This must be done each time there is a change in supervisors or administrators.

The employer will then inform the Board, in writing, that he/she is aware of the discipline, on forms to be provided to the Respondent. Respondent is responsible for contacting the Board to obtain additional forms if needed. All reports completed by the employer must be submitted from the employer directly to the Board.

In addition, any employer, director, manager, supervisor or contractor, shall report to the Board immediately, within 24 hours, if he/she suspects Respondent is under the influence of alcohol or any substance or has had any occurrence of substance abuse.

11. SUPERVISOR QUARTERLY REPORTS Supervisor Quarterly Reports of Performance are due for each year of probation and the entire length of probation from each employer, as follows:

For the period covering January 1st through March 31st, reports are to be completed and submitted between April 1st and April 7th.

For the period covering April 1st through June 30th, reports are to be completed and submitted between July 1st and July 7th.

For the period covering July 1st through September 30th, reports are to be completed and submitted between October 1st and October 7th.

For the period covering October 1st through December 31st, reports are to be completed and submitted between January 1st and January 7th.

Respondent is ultimately responsible for ensuring his/her employer(s) submits complete and timely reports.

12. CHANGES OF EMPLOYMENT OR RESIDENCE Respondent shall notify the Board, and appointed probation monitor, in writing, of any and all changes of employment, location, and address within 3 days of such change. This includes but is not limited to applying for employment, termination or resignation from employment, change in employment status, change in supervisors, administrators or directors.

Respondent shall also notify his/her probation monitor AND the Board IN WRITING of any changes of residence or mailing address within 3 days. P.O. Boxes are accepted for mailing purposes, however the Respondent must also provide his/her physical residence address as well.

13. TOLLING FOR OUT-OF-STATE RESIDENCE OR PRACTICE Periods of residency or practice outside California, whether the periods of residency or practice are temporary or permanent, will toll the probation period but will not toll the obey all laws, quarterly reports, probation monitoring program, probation monitoring costs, or cost recovery requirements. Travel out of California for more than 30 days must be reported to the Board in writing prior to departure. Respondent shall notify the Board, in writing, within 3 days, upon his/her return to California and prior to the commencement of any employment where representation as a respiratory care practitioner is/was provided.

Respondent's license shall automatically be cancelled if respondent's cumulative period tolling is greater than five years. However, the cancellation of the license does not relieve the respondent from outstanding cost recovery or probation monitoring costs.

14. VALID LICENSE STATUS Respondent shall maintain a current, active and valid license for the length of the probation period. Failure to pay all fees and meet CE requirements prior to his/her license expiration date shall constitute a violation of probation.

15. VIOLATION OF PROBATION If Respondent violates any term of the probation in any respect, the Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If a petition to revoke probation is filed against Respondent during probation, the Board shall have continuing jurisdiction and the period of probation shall be extended until the matter is final. No petition for modification of penalty shall be considered while there is an accusation or petition to revoke probation or other penalty pending against Respondent.

16. SURRENDER OF LICENSE Following the effective date of this decision, if Respondent ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the terms and conditions of probation, he may request the voluntary surrender of his license. The Board reserves the right to evaluate Respondent's request and to exercise its discretion whether or not to grant the request or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, within 15 calendar days Respondent shall deliver his wallet and wall certificate to the Board or its designee and he shall no longer practice respiratory care. Respondent will no longer be subject to the terms and conditions of probation and the surrender of Respondent's license shall be deemed disciplinary action. If Respondent re-applies for a respiratory care license, the application shall be treated as a petition for reinstatement of a revoked license.

17. COMPLETION OF PROBATION Upon successful completion of probation, Respondent's license shall be fully restored.

IT IS SO ORDERED on this 20th day of October, 2011.

Original signed by:

LARRY L. RENNER, BS, RRT, RCP, RPFT
PRESIDENT, RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA